Orlod (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 115 /2004

PETITIONER : Indulal Nishad, S/o Late Shri B.R.Nishad, aged 58 years, Occupation- President of Chhattisgarh State Co-operative Fish Federation Ltd., Raja Talab, Raipur (C.G.), R/o Mahadev Ghat Road, Village-Raipura, Raipur (C.G.)

-VERSUS-

RESPONDENTS :

1. State of Chhattisgarh through Secretary, Department of Agriculture (Co-Operative), Mantralaya, D.K.S.Bhavan, Raipur (C.G.)
2. Registrar, Co-operative Societies, State of Chhattisgarh, Raipur (C.G.)
3. Managing Director, Chhattisgarh State Co-operative Fish Federation Ltd., Raja Talab, Raipur (C.G.)
4. Officer-in-Charge, Chhattisgarh State Co-operative Fish Federation Ltd., Raja Talab, Raipur (C.G.)

P.R. No. 116/04 Presented by Shri Shukyaam Gupta dated 12.11.04

संयुक्त आयुक्त, 17/04 एस आर कोशिक बिलासपुर 17/11/04

WRIT UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF A SUITABLE WRIT, ORDERS OR DIRECTION.

(12)

A.F.R

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

Writ Petition No.115 of 2004

Indulal Nishad
S/o Late B.R. Nishad, aged 58 years,
Occupation-President of Chhattisgarh State
Co-operative Fish Federation Ltd., Raja Talab, Raipur
(Chhattisgarh) R/oMahadev Ghat Road, Village Raipura, Raipur (C.G.).

Versus

State of Chhattisgarh and others

POST FOR ORDER ON 3rd FEBRUARY, 2004

Sd/-
L.C. Bhadoo
Judge

(113) A.F.R.

HIGH COURT OF JUDICATURE AT BILASPUR (CHHATTISGARH)

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Present: -

Mr. Vivek Tankha, Sr. Advocate with Shri Rajeev Shrivastava, Advocate for the petitioner.

Mr. P.S. Koshy, Govt. Advocate for the State/respondents.

ORDER

(Passed on 27th February, 2004)

As per L.C. Bhadoo J.

By this writ petition filed under Articles 226/227 of the Constitution of India the petitioner who was the President of Chhattisgarh State Co-operative Fish Federation (hereinafter referred to as 'Fish Federation') has questioned the order dated 23-12-2003 (Annexure-P/5) on the ground that the impugned order is arbitrary, illegal and contrary to the law and the same being without jurisdiction with malafide intention and in a colourable exercise of power whereby the Registrar Co-operative Societies under sub-section 13 of Section 53 of the Chhattisgarh Co-operative Societies Act, 1960 in partial modification of the earlier order dated 10-7-2003 appointed Shri N.L. Tandon, Deputy Registrar, Co-operative Societies as officer-in-charge in place of the Board of Directors.

(114)

2. Brief facts giving rise to filing of this petition are that on reorganization of the State of Madhya Pradesh, a new State of Chhattisgarh was carved out of the State of Madhya Pradesh and the new State came into existence on 1st November 2000. As a consequence of that the existing Fish Federation of the State of Madhya Pradesh was reconstituted as per the provisions of Chhattisgarh Sahkari Society (Punarghatan Aur Nirman) Adhyadesh, 2000. The Fish Federation came into existence on 30th October 2000 and the Commissioner, Co-operative and Registrar, Co-operative (Madhya Pradesh) issued registration certificate under the provisions of Section 9(1) of the Act, 1960, as per Annexure-P/1.

3. The Fish Federation was constituted with an object of Pisces culture, fish rearing, marketing of fish and overall development of fisheries. As per the Clause-1 of byelaw 30 of the registered Byelaws of the Fish Federation after registration, first Board of Directors of Fish Federation was to be nominated by the Registrar for the period of one year or till the election and the appointment was restricted among the persons who are either President or representative of the member of Society of Fish Federation. The registered byelaws are Annexure-P/2. As per the clause-1 of byelaw 30 before nomination of the Board of Directors, the Registrar was required to appoint class-I officer as officer-in-charge for exercising the powers of the Board of Directors. Therefore, under the enabling powers under sub-section 13 of Section 53 of the Act, 1960 and under clause-1 of byelaw 30 of the Byelaws of the Fish Federation vide order dated 9-7-2003, the Registrar, Co-operative Societies nominated Board of Directors in which the petitioner was nominated as President of the Board of Directors of the Fish Federation as per Annexure-P/3. As a consequence of that the Board of Directors started functioning in the month of August, 2003 and the meeting of the Board of Directors was held on 24th November 2003 in which the Board of Directors took some decisions to achieve the object of the byelaws of the Fish Federation. Copy of the minutes of the meeting is Annexure-P/4.

115

4. As the Board of Directors was constituted by the Registrar under the order dated 9-7-2003 for a period of one year or till the elections of the Board of Directors are held, but the Registrar, Co-operative Societies vide impugned order amended the order dated 9-7-2003 vide Annexure-P/5 dated 23rd December 2003 and appointed the Deputy Registrar as Officer-in-Charge of the Fish Federation by removing the Board of Directors. The petitioner's petition is that once the Registrar exercised the power under sub-section 13 of Section 53 of the Act 1960, he was not empowered to supersede that order till one year or the elections of the Board of Directors are conducted, therefore, the petitioner has prayed for setting aside the order dated 23-12-2003.

5. Return has been filed on behalf of respondents in which the above factual position has not been disputed but it has been mentioned that as the order of the Registrar is appealable under Section 77 of the Co-operative Societies Act and as per Annexure-R/1 notification issued by the State Government dated 9-9-2003 the appeal is lie before the State Government. The second ground has been taken that the petition of the petitioner is not maintainable on the ground that the petitioner himself was not eligible to become the President of the Federation on the ground that he was not eligible to become a member of the primary society, which is mandatory requirement for holding the post in the Federation and the nomination of the petitioner is now in dispute in a writ petition pending before this Court. Moreover, the petitioner is a practicing lawyer and enrolled under the Chhattisgarh State Bar Council. He is also a Sarpanch of Gram Panchayat Raipura, he is not a fisherman therefore, he was not eligible to become the President.

6. It has further been mentioned that under sub-section 13 of Section 53 of the Act, 1960 the Registrar is competent to pass any order for removing the Board of Directors and in its place appoint an officer-in-charge. It is submitted that the allegations made by the petitioner are false, baseless and frivolous whereas on the contrary there were complaints against the

(116)

petitioner for non-performance and also performing against the interest of the Society which had compelled respondent No.2 to pass the impugned order, therefore, the petition be dismissed. Respondents 3 and 4 in their return have adopted the reply filed by respondents 1 and 2.

7. I have heard the learned counsel for the parties.

8. It is not disputed that the Board of Directors was constituted by respondent No.2, the Registrar under sub-section 13 of Section 53 of the Act 1960 vide Annexure-P/3 and the tenure in this order has been mentioned as one year or till the elections are conducted and the petitioner was appointed as the President along with others 4 private members and four Government nominees by virtue of the post they were holding in the National Co-operative Development Corporation or nominee of the Chhattisgarh State Co-operative Bank and the General Manager of the Fish Federation and the Registrar, Co-operative Societies or his nominee not below the rank of Deputy Registrar.

9. Now the question comes as to whether the Registrar was entitled or authorized to supersede the order dated 9-7-2003 by impugned order, even though it has been mentioned in the impugned order that this order has been issued in partial modification of the earlier order dated 9-7-2003, but in-fact, the language employed in this order shows that it is, in-fact, in supersession of the earlier order, it is not a partial modification. The partial modification is always any partial amendment made in the original order whereas by this impugned order the Board has been superseded and the Deputy Registrar, Co-operative Society has been appointed as officer-in-charge of the Fish Board. The relevant sub-section 13 of Section 53 of the Act, 1960 reads thus:-

> "Notwithstanding anything contained in this Act, or rules made thereunder or byelaws of society, if the committee of society ceases to function due to order of any Court or otherwise, the Registrar may appoint a person or committee of persons

(117)

temporarily till the Court order is vacated or the new elections are held and the committee takes charge."

A bare perusal of this provision shows that in the present case none of the conditions were existing before the Registrar to issue the impugned order under the above provision neither there was a Court order nor the committee of the Society ceased to function on account of any order. That was very much in existence. Therefore, there was no occasion before the Registrar to issue the impugned order.

10. It is true that when power is given to any particular authority under any provision of law for appointing any committee then that authority within its right to modify or supersede that order even if there is no specific power given in the same provision as per the provisions of Section 16 of the C.G. General Clauses Act, but that authority can pass such an order for the good reasons which forced the authority to pass an order superseding the earlier order. In this case, the respondents 1 and 2 in their return mentioned that there were complaints against the Board of Directors regarding their non-performance or performing against the interest of the society, which had compelled respondent No.2 to issue the impugned order. In the first instance in the impugned order no reason has been mentioned for issuance of the impugned order nor there is any mention in this order or in the return that any such complaints were pending before the Registrar and those complaints were enquired into by the Registrar or any officer nominated by him. After giving show cause notice to the Directors and after conducting such an enquiry the Registrar reached the definite conclusion that there are serious complaints against the Board of non-functioning or functioning against the interest of the Society. So merely mentioning in the return, without assigning any reason or without any enquiry complaints which were received against the Directors of Fish Federation and the impugned order is without any basis.

11. Since no power was vesting with the Registrar under sub-section 13 of Section 53 of the Act, 1960 to supersede the order dated 9-7-2003 nor any

(118)

enquiry was conducted by the Registrar regarding non-functioning or acting prejudicially to the aims and objects of the Society by the Board of Directors, the impugned order passed by the Registrar is without jurisdiction, contrary to the settled principles of natural justice and contrary to the object and spirit of the Co-operative Societies Act and also contrary to the objects of the byelaws of the Fish Federation.

12. Now, coming to the question raised by Shri P.S. Koshy, Govt. Advocate that the petitioner was not eligible to become the President as he was not eligible to become member of the Primary Society, therefore, he was not eligible to hold the post of the President of the Apex Body, as the petitioner is not a fisherman, in fact, he is a practicing advocate and village Sarpanch. He further submitted that an action has been initiated to that effect against the petitioner, therefore, the petition is liable to be dismissed.

13. To my mind, it is an admitted fact that till today the petitioner is a member of the primary fisherman society and unless and until he is removed or declared ineligible to become the primary member of the fisherman society, that too after holding an enquiry and by giving opportunity to the petitioner so long he is a member of the fisherman society, he is also entitled to become the member of the Apex Body of the Fish Federation. As the primary membership might have been challenged in this writ petition but unless, as has been mentioned above, his primary membership is cancelled he cannot be removed from the post of the President of the Apex Body on that ground.

14. Learned counsel for respondents Mr. P.S. Koshy further submitted that the petitioner had an equally efficacious and alternative remedy to file an appeal before the State Government as per the provisions of Section 77 of the Chhattisgarh Cooperative Societies Act, 1960.

15. On the other hand, the learned Senior Advocate for the petitioner submitted that the order passed by the authority is without jurisdiction and

(119)

contrary to the settled principles of law, therefore, the petitioner is within his rights to approach to this Court under the writ jurisdiction and the principle of alternative remedy cannot be pressed into service under these circumstances. Learned Senior Counsel relied upon the judgment of the Hon'ble Apex Court reported in **(1998) 8 Supreme Court Cases 1** in the matter of **Whirlpool Corporation Versus Registrar of Trade Marks, Mumbai and others.** The Hon'ble Apex Court while dealing with the question of alternative remedy held that:-

> "The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by the Supreme Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

As has been held above, in this matter while removing duly constituted Board of Directors of the Fish Federation by the impugned order, the Registrar, Co-operative Societies has violated the principles of natural justice, as before removing the Board of Directors no show cause notice was given to the Board of Directors nor any enquiry was conducted nor any reason has been assigned in the impugned order for superseding the Fish Federation and the petitioner is also entitled to move this writ petition because the order passed by the Registrar is without jurisdiction.

120

16. As has been discussed above that once the power exercised by the Registrar under sub-section 13 of the Section 53 of the Act, 1960 under those provisions the Registrar had no jurisdiction to supersede that order or remove the full Board, as has been held in the earlier part of this order. Even the power exercised by the Registrar under sub-section 13 of Section 53 of the Act at the initial stage was on account of the Reorganization of the State and that was an extraordinary event. There was no other power vested in the Registrar and once the power was exercised by the Registrar under extraordinary situation under sub-section 13 of Section 53 of the Act on account of reorganization of the State and under Clause-1 of byelaw 30 of the Byelaws, the Registrar was not authorized to exercise that power again.

17. Even the Hon'ble Apex Court in the matter of **State of U.P. Versus Mohammad Nooh** reported in **AIR 1958 SUPREME COURT 86** held that:-

> "It is no doubt true that the High Court may refuse to exercise its jurisdiction under Article 226 of the Constitution of India if the petitioner did not avail alternative remedies, but the rule requiring the exhaustion of alternative remedies before the writ will be issued is a rule of policy, convenience and discretion. The High Court will readily issue a writ of certiorari in a case where there has been a denial of natural justice."

In view of the above judgments of the Hon'ble Apex Court the objection raised by the learned counsel for the State regarding the alternative remedies is without force.

18. In the result, the writ petition succeeds and the same is allowed. The impugned order dated 23-12-2003 (Annexure-P/5) is quashed and set-aside. Looking to the facts and circumstances, cost is made easy.

Sd/-
L.C. Bhadoo
Judge

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